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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CAROL WILSON FINE ARTS, INC, an
Oregon Corporation,
Plaintiff,
v.

Case No.: 3:14-cv-00587-AA

ZIFEN QIAN, an individual,
Defendant.

DEFENDANT ANSWER

Your Honor, Defendant Zifen Qian, responds and answers the complaint filed against him as follows:

1. Acknowledge allegation 1: Defendant received plaintiff's complaint. The followings are the answer to the complaint under the US Copyright Act 1976 and Nimmer on Copyrights (section 503 {B}{I}{B}{i} at page 5-36).
2. Acknowledge allegation 2.
3. Acknowledge allegation 3
4. Acknowledge allegation 4.
5. Acknowledge allegation 5.
6. Acknowledge allegation 6.
7. Deny allegation 7. The term of Carol Wilson Fine Arts, Inc. products "incorporating original paintings, illustrations," is incorrect. It should be: Carol Wilson Fine Arts, Inc. publishes different artists' paintings and illustrations on its greeting cards, stationeries and other paper products. There is no original painting as product of Carol Wilson Fine Arts, Inc. Original painting and printing product are different things.
8. Acknowledge allegation 8.
9. Deny allegation 9. The truth is, during the two decades all artists Carol Wilson Fine Arts, Inc. has hired were graphic designers with emphasizing product design and computer graphic design background. Carol Wilson Fine Arts, Inc. did not hire any artist with job duty (include title) of

professional painter, although amount those hired may have painting background, from record of Carol Wilson Fine Arts, Inc. hiring history.

10. Deny allegation 10. The term of "artists" is unclear. It should be defined "graphic designers" instead of general term of "artists".
11. Deny allegation 11. It should be, because of the job duty of products and graphic designs the pay was hourly.
12. Deny allegation 12. It should be, because those hired "artists" are graphic designers and the job of graphic design was not paid royalty or flat fee.
13. Deny allegation 13. Same as answer 11, answer 12.
14. Deny allegation 14. The term of "works" should be defined based on specific job duty in written employment contracts. The term of "incorporation" should be defined as publishing.
15. Deny allegation 15. Same as answer 11, answer 12.
16. Deny allegation 16. It should be, Carol Wilson Fine Arts, Inc. provides limited facilities, equipment and supplies that mainly for all graphic designers to design graphic formats and draft ideas.
17. Deny allegation 17. It should be, Zifen Qian's painting is not part of his employment duty but he can still use the facilities and equipment to help his independent academic painting research if needed and encouraged since he was simultaneously teaching art classes at college or doing academic research, and the results may also benefit Carol Wilson Fine Arts, Inc. to have more selections of searching paintings to be published on greeting cards.
18. Deny allegation 18. It should be, each artist has specific and different deal (employment contract) with Carol Wilson Fine Arts, Inc.
19. Deny allegation 19. Same as answer 18.
20. Deny allegation 20. Same as answer 18.
21. Deny allegation 21. Same as answer 18.
22. Acknowledge allegation 22.
23. Acknowledge allegation 23.

24. Deny allegation 24. It should be, Zifen Qian was offered an hourly job for paper products format design by Carol Wilson Fine Arts, Inc. in 1992 while he was a faculty of teaching at Pacific Northwest College of Art in Portland, Oregon.
25. Acknowledge allegation 25.
26. Deny allegation 26. It should be, a sentence of "under Employer's control and direction" in the employment agreement is for the hourly job of designing graphic formats of the paper products. It is nothing to do with high level personal style painting presentation. Original painting was not included in Zifen Qian's job duty of the employment agreement.
27. Deny allegation 27. It should be, because the job duty in employment agreement did not include any duty of providing copyrightable original painting, Zifen Qian's employment agreement makes no mention of copyright right.
28. Acknowledge allegation 28.
29. Deny allegation 29. Zifen Qian worked over 21 years in Carol Wilson Fine Arts, Inc.
30. Deny allegation 30. Zifen Qian has only one title by company's official business card: "Senior Artist".
31. Deny allegation 31. Zifen Qian's title of "Senior Artist" clearly indicates the job is about graphic commercial designs. If a position is painter, the title should be called "Fine Artist" or "Painter".
32. Deny allegation 32. Zifen Qian has created many paintings include his style of aesthetic watercolors. None of them were for commercial purposes but only for academic researches to establish Zifen Qian's Modern Romanticism along with his aestheticism. Carol Wilson Fine Arts, Inc. has selected part of his aesthetic watercolors to be published on greeting cards and related paper products. Such watercolors to be selected for publishing 1 or 2 pieces a year, or, 10 or more pieces a year, depend on how much Zifen Qian's painting availability.
33. Deny allegation 33. What "artwork" means? Even if it means "graphic design artwork", Gary Spector or Carol Wilson did not review and direct all the development. If it means Zifen Qian's painting, Gary Spector or Carol Wilson was impossible to control and direct Zifen Qian how to create his paintings, and no power, right and ability to prove or direct Zifen Qian's painting finishing steps since Zifen Qian has to sign the paintings as responsible author, otherwise Gary Spector or Carol Wilson could be against freedom expression of constitution. Gary Spector and Carol Wilson only have power and right to select paintings they like to be published, they prove the ways of publishing, the formats of paper product and final printing look of a complete product, to act as publisher. Zifen Qian welcomes Gary Spector or Carol Wilson and any audience's comments or suggestions to his paintings. Zifen Qian may or may not accept those comments and suggestions. However, that does not change the fact that Zifen Qian is a solo author (painter) of the paintings.

34. Deny allegation 34. Zifen Qian never allow other individual include Gary Spector or Carol Wilson to distract his painting creations, although he may listen comments or suggestions sometime as reference. Zifen Qian took full responsibility of how and what to be done of his painting that directly affecting his professional reputation because he has to sign and name to be printed on the back of each published card. Gary Spector or Carol Wilson only has power and right to select what they like to be published from what Zifen Qian has done.
35. Deny allegation 35. Carol Wilson Fine Arts, Inc. has only assigned many projects of graphic and product format designs for Zifen Qian to complete. But creating painting is not like production project. It involves inspiration, passion and many other elements. Gary Spector and Carol Wilson have no idea what actual painting can fit a format before they find a completed painting.
36. Deny allegation 36. All of Zifen Qian's paintings have been selected to be published by Carol Wilson Fine Arts, Inc. were either started (inspiration and composing) at Zifen Qian's home studio then brought to the company to continue or started (inspiration and composing) at the company then brought to home studio to continue and finish, or completely started and finished at home studio then brought to company for selection which includes some pieces at this case issue posted on Zifen Qian's website.
37. Deny allegation 37. Zifen Qian has used public and college's libraries, college's facilities, Home studio and Carol Wilson Fine Arts, Inc. office to conduct his artistic expression of forming aesthetic watercolor. It depends on where and when the passion, inspiration and composing mood came from. It is freedom expression of creating scholarly work.
38. Deny allegation 38. Photography is for potential subjects could be included in greeting cards or other products designs. It is part of format design references. It has image reference function and such photos are the same as library's reference masteries.
39. Deny allegation 39. Carol Wilson Fine Arts, Inc. paying photography cost was for the product design needs and benefits all graphic designers in the company.
40. Deny allegation 40. Same as answer 39.
41. Deny allegation 41. Same as answer 17.
42. Deny allegation 42. Same as answer 16.
43. Deny allegation 43. The hourly job of graphic design was nothing to do with personal style original painting. Since Zifen Qian's painting is not part of his hourly job, Carol Wilson Fine Arts, Inc. did not pay Zifen Qian's any important research costs and efforts for his painting creations such as trip to Europe museums, all the efforts have done at home studio and at college facilities. Zifen Qian brought French modern trend to connect with his aesthetic watercolor that getting his long term exploration of such unique style more complete.

44. Deny allegation 44. Same as answer 43.
45. Deny allegation 45. Same as answer 43.
46. Deny allegation 46. Same as answer 43.
47. Deny allegation 47. It should be, Zifen Qian was paid bonuses annually of every year end until recent years the economy went bad and the company's sales down.
48. Deny allegation 48. Those bonuses were partially carrying Gary Spector and Carol Wilson's promise in the first interview with Zifen Qian.
49. Deny allegation 49. Zifen Qian realized that he did not really get what he deserved pay through the bonuses based on the sale of his paintings published on Carol Wilson Fine Arts, Inc. paper products for long time.
50. Deny allegation 50. Zifen Qian was questioning Gary Spector and Carol Wilson about their initial promise in number of times. But Gary Spector and Carol Wilson denied their promise.
51. Deny allegation 51. Gary Spector and Carol Wilson tried to mix an hourly job of product format and graphic design with Zifen Qian personal style none commercial academic original painting presentation together with no legal written contract and any agreement.
52. Deny allegation 52. Zifen Qian kept working at Carol Wilson Fine Arts, Inc. as a paper products designer and felt hopeless to get reasonable bonuses. Since recent years the economy went bad and the company's sale went down Zifen Qian did not further mention this matter.
53. Deny allegation 53. Zifen Qian has created many paintings include oil paintings and watercolors. None of them were for commercial purposes but only for academic researches and establishing own style.
54. Deny allegation 54. Zifen Qian's paintings cannot be separated with "other artworks". Location of facilities and costless materials don't change the nature and result of Zifen Qian's scholarly painting pursuant Nimmer on Copyrights (section 503 {B}{I}{B}{i} at page 5-36).
55. Deny allegation 55. Same as answer 54.
56. Deny allegation 56. Zifen Qian's inspiration and composing thoughts of oil paintings were happening at any time no matter at day or night, weekday or weekend. Such artistic sprits were always benefiting other job.
57. Deny allegation 57. Same as answer 54.

58. Deny allegation 58. Same as answer 54.

59. Deny allegation 59. Zifen Qian has publicly exhibited many paintings include Modern Romantic oil paintings, aesthetic watercolors, ink paintings and drawings in different cities of the United States and other countries.

60. Deny allegation 60. Carol Wilson Fine Arts, Inc. has no right to object Zifen Qian's any freedom expression.

61. Acknowledge allegation 61.

62. Acknowledge allegation 62.

63. Acknowledge allegation 63.

64. Deny allegation 64. As indicated above that "employee" means product format graphic designer: "Senior Artist".

65. Deny allegation 65. Same as answer 64.

66. Deny allegation 66. Same as answer 64.

67. Acknowledge allegation 67.

68. Deny allegation 68. Zifen Qian did not have any Carol Wilson Fine Arts, Inc.'s property with his leaving the company.

69. Deny allegation 69. It should be, the job duty in employment agreement does not include copyrightable original painting.

70. Deny allegation 70. Zifen Qian's aesthetic watercolor expressions were not within the scope of employment since it is not in his job duty description of employment agreement.

71. Deny allegation 71. "Work Made for Hire" is only for those works have been indicated in job description of an employment contract or other agreement that clarify those works belong to the employment. Zifen Qian's painting was not part of his employment, so does not belong to work made for hire pursuant US Copyright Act of 1976 and Nimmer Copyrights.

72. Deny allegation 72. Carol Wilson Fine Arts, Inc. is the rightful owner of copyrights to all paper products format designs such as lace flaps and the company's brand name. But Carol Wilson Fine Arts, Inc. is not the rightful owner of copyrights of Zifen Qian's paintings without any transferring agreement between the company and Zifen Qian.

73. Deny allegation 73. Zifen Qian has all copyright rights to any of his paintings created for exploring his own style with academic value, including the paintings have been selected by Carol Wilson Fine Arts, Inc. to publish on the company's greeting cards and other paper products.

74. Acknowledge allegation 74.

75. Acknowledge allegation 75.

76. Deny allegation 76. Some of those displayed aesthetic watercolors were available for Carol Wilson Fine Arts, Inc. to select for publishing, but those are none commercial purpose paintings. Those were also part of Zifen Qian's teaching demonstration references.

77. Deny allegation 77. Zifen Qian painted each of the watercolors was nothing to do with his employment as indicated above. It is not part of his hourly job duty.

78. Deny allegation 78. Same as answer 77.

79. Deny allegation 79. It is misplacing US Copyright Act.

80. Deny allegation 80. Based on answer 77 and other above stated, Zifen Qian as lawful and nature author of all watercolors he has done holds copyrights of those watercolors.

81. Deny allegation 81. It is not true.

82. Deny allegation 82. Carol Wilson Fine Arts, Inc. unlawful registration of copyrights in US Copyright Office of Zifen Qian's many paintings to be the company's copyrights without Zifen Qian's copyright transferring agreement is a serious fragrance conduct.

83. Deny allegation 83. Same answer as 82, plus it also must be pointed out, Zifen Qian's aesthetic watercolors are not "work made for hire" by another evidence: All published paintings on Carol Wilson Fine Arts, Inc. greeting cards have been printed "Watercolor by Zifen Qian" on the back of the cards. Based on US copyright act, if a work labeled "work made for hire", the author must be employer, employee has no authorship can be credited on the work. As the nature of a painting, only author can sign the painting, only author's name is the artist (pater).

84. Deny allegation 84. Same as answer 82.

85. Acknowledge allegation 85.

86. Acknowledge allegation 86.

87. Acknowledge allegation 87.

88. Acknowledge allegation 88.

89. Deny allegation 89. Zifen Qian contends that he is the rightful owner of the copyrights in all his paintings include those paintings have been selected to be published on Carol Wilson Fine Arts, Inc. paper products. Since those paintings do not belong to "work made for hire" definition. Zifen Qian has authorship of all his paintings that recognized by the world.

90. Deny allegation 90. Zifen Qian has right to keep any and all his photos of his paintings since he owns the original paintings copyrights.

91. Deny allegation 91. Same as answer 82.

92. Acknowledge allegation 92.

93. Acknowledge allegation 93.

94. Acknowledge allegation 94.

95. Deny allegation 95. Carol Wilson Fine Arts, Inc. threatened Zifen Qian to sign an unfair agreement with unjustified accusation of infringement copyright. Zifen Qian refused.

96. Deny allegation 96. Another unjustified agreement for Zifen Qian to sign. Zifen Qian refused.

97. Acknowledge allegation 97.

98. Acknowledge allegation 98.

99. Acknowledge allegation 99.

100. Deny allegation 100. Same as answer 96.

101. Deny allegation 101. Zifen Qian has stated more clearly regarding the reasons of why his paintings do not belong to "work made for hire".

102. Deny allegation 102. It is unjustified accusation.

103. Deny allegation 103. Carol Wilson Fine Arts, Inc. should take responsibility of its statements and unjustified accusations.

104. Deny allegation 104. Same as answer 82.

105. Deny allegation 105. Zifen Qian has all rights to publish his own paintings for any professional promotion and academic usages and any usages that law permitted.

106. Deny allegation 106. Carol Wilson Fine Arts, Inc. has no right to grant permission, license and other authorizations of Zifen Qian's paintings.
107. Deny allegation 107. Carol Wilson Fine Arts, Inc. unlawfully registered Zifen Qian's paintings copyrights to be the company's copyrights. It damaged and is damaging Zifen Qian's reputation as lawful copyrights owner of his paintings. It damages Zifen Qian as internationally recognized artist's current and future professional life. It causes further injury of Zifen Qian's spirit and career such as applying professional job related to Zifen Qian's aesthetic watercolor creations and teaching at colleges in such subject, as well as the reputation and potential in the art market nationally and internationally.
108. Deny allegation 108. Same as answer 82.
109. Deny allegation 109. Plaintiff's claim has no legal bases.
110. Deny allegation 110. Plaintiff's claim is unjustified and has no legal bases.
111. Deny allegation 111. Same as answer 109.
112. Deny allegation 112. Same as answer 89.
113. Deny allegation 113. Plaintiff's claim has no legal bases.
114. Deny allegation 114. Zifen Qian has not yet distributed his own paintings in the issue. However, Zifen Qian has right to do so if needed.
115. Deny allegation 115. Same as answer 82.
116. Acknowledge allegation 116.
117. Deny allegation 117. Plaintiff's claim is unjustified.

PRAYER

Having fully answered the claims of the plaintiff, defendant prays the plaintiff take nothing on plaintiff's claims, that plaintiff's complaint be dismissed with prejudice and that defendant be awarded as follows:

- A. Carol Wilson Fine Arts, Inc. must withdraw immediately its unlawful registrations of copyrights at US Copyright Office of all Zifen Qian's original paintings and stop infringing Zifen Qian's copyrights.
- B. An award of \$1,000,000 to be proven at this Court to Zifen Qian of damages (indicated in answer 107) from all Carol Wilson Fine Arts, Inc.'s unlawful registrations of copyrights in US Copyright Office of Zifen Qian's original paintings without any agreement with Zifen Qian regarding the matter.

- C. Carol Wilson Fine Arts, Inc. should pay all unpaid bonuses of profit from the sale of Zifen Qian's paintings published on the company's greeting cards and other paper products during the 21 years. The amount should be estimated and proven by this Court.
- D. An award of Zifen Qian's costs and attorney fees pursuant to 17 USC 505.
- E. A declaration that all Zifen Qian's paintings have been published by Carol Wilson Fine Arts, Inc. are not "work made for hire", and that Zifen Qian is lawful and nature author and owns copyrights of all such paintings.
- F. Such other relief, in law or equity, to which Zifen Qian may be entitled, or which this Court may deem just and proper.

JURY DEMAND

Defendant Zifen Qian hereby demands a jury trial as to all issues in this case.

Dated: April 22, 2014



Zifen Qian

Defendant

Address:

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